

# SUPPLEMENTARY CONDITIONS

## Modifications to AIA Document A201-1997, General Conditions of the Contract for Construction

The following supplements modify, change, delete from or add to "General Conditions of the Contract for Construction", AIA Document A201, 1997 Edition. Where an Article, Paragraph, Subparagraph or Clause of General Conditions is modified or deleted by Supplementary Conditions unaltered provisions of that Article, Paragraph, Subparagraph or Clause shall remain in effect.

### 1 GENERAL PROVISIONS

**1.1.7** After "...volume" insert "or set"; and, after "...Contract" insert ", schedules, tables, drawings,".

**1.1.8** Add subparagraph 1.1.8 as follows:

**Provide or Provided:**

"Provide" or "Provided" as used in Contract Documents includes furnishing and installing a thing, product, system or the like.

**1.2.4** Add subparagraph 1.2.4 as follows:

Within the Specifications, the sections of Division One (01) are General Requirements, and apply to all sections of the Specifications.

**1.6** In paragraph heading and throughout subparagraph 1.6.1, delete "Instruments of Service", and substitute "Documents"; and, in third sentence, after "...authors of them", delete the rest of sentence.

### 2 OWNER

**2.1.1** In the first sentence after "The Owner is the..." delete remainder of sentence and substitute "State of Tennessee". At the end of the second sentence add "except as otherwise provided in this subparagraph". Add to subparagraph as follows:

For the purposes described in this subparagraph relating to approval of modifications described in Article 7, the signature of the following will constitute the signature of the Owner:

- .1 the State Architect or the head of Tennessee Department of Finance & Administration Real Property Administration; and,
- .2 the head, or the designee thereof, of the Contracting Agency identified as such in the Agreement if not the Department of Finance and Administration.

**2.1.2** Delete entire subparagraph. Public construction projects are not subject to mechanics' liens in Tennessee. The remedy afforded to laborers and furnishers of material on State projects is referenced in Subparagraph 4.4.8.

**2.2.1** Delete entire subparagraph and substitute: "The Owner's project number constitutes verification that funding has been established as a matter of public record."

**2.4.1** Delete entire subparagraph and substitute: "If Contractor defaults or neglects to carry out Work in accordance with Contract Documents or fails to fulfill requirements of Contract, then Owner may, after ten (10) days written notice to Contractor and without prejudice to any other remedy that Owner may have, make good such deficiencies. In such case, appropriate modification will be issued deducting from payments then or thereafter due Contractor the cost of correcting such deficiencies, including costs of Designer's additional services made necessary by such default, neglect, or failure. Designer will approve both such action and the amount charged to Contractor. If payments then or thereafter due Contractor are insufficient to cover such amount, Contractor shall pay difference to Owner."

### 3 CONTRACTOR

**3.1.4** Add subparagraph 3.1.4 as follows:

At the time of bid and award, Contractor shall not be currently disqualified from participating in State construction projects under the supervision of the State Building Commission. Such disqualification extends to succeeding or related corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified.

**3.2.3** Delete the last sentence and substitute: "Contractor shall not be liable to Owner or Designer for damage resulting from error, inconsistency, or omission in Contract Documents, unless Contractor discovered, or in the exercise of reasonable diligence should have discovered such error, inconsistency, or omission and failed to report it to Designer. If contractor performs construction activity when Contractor knows, or should know in exercise of reasonable diligence that the activity involves error, inconsistency, or omission in Contract Documents, Contractor shall assume responsibility for such performance and shall bear the attributable costs for correction."

**3.3.1** In third sentence, after "...timely written notice", insert "and a proposal of corrective changes", before continuing with "to the Owner..."; and, delete the last sentence.

**3.4** Add Subparagraphs 3.4.4 through 3.4.7 as follows:

**3.4.1** Add to subparagraph as follows: "Contractor shall not receive material nor labor from one who submitted a competing general bid for the same Contract and subsequently withdrew, reneged, or otherwise failed to enter into contract."

**3.4.2** Delete this subparagraph in its entirety, and substitute the following:  
Specified materials, equipment, and systems are essential elements of the Contract. If Contractor desires to use another material, equipment, or system in lieu thereof, Contractor shall request approval in writing and shall submit samples and data as required for Designer's consideration. Designer and Owner will be final judge of acceptability of substitution. No substitution shall be made without authority in writing from Designer. Not later than twenty-one (21) days after award of contract, Contractor shall provide a list showing names of manufacturers proposed for each specified product, and applicable name of installer, whether Contractor or subcontractor. Designer will within fourteen (14) days reply in writing to Contractor stating whether Owner or Designer, after due investigation, has reasonable objection to any such manufacturer or installer. If adequate data on proposed manufacturer or installer is not available, Designer may state that action will be deferred until Contractor provides further data. Contractor shall not make use of a manufacturer, or installer to which Owner or Designer has reasonably objected. Contractor will receive adjustment in Contract Sum, Contract Time, or both for making such change unless objection was based on failure of manufacturer or installer to meet requirements of Contract Documents, in which case neither Contract Sum nor Contract Time shall be adjusted. Failure to object to a manufacturer shall not constitute waiver of requirements of Contract Documents. Products furnished by listed manufacturers must conform to such requirements.

**3.4.4** Contractor shall disclose existence and extent of financial interests, whether direct or indirect, which Contractor has in proposed subcontractors and material suppliers.

**3.4.5 Non-discrimination in employment:**

**3.4.5.1** Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, religion, sex, age, or national origin as defined in Tennessee Code Annotated (TCA) 4-21-401, et seq., nor because of handicap, in accordance with TCA 8-50-103.

**3.4.5.2** Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to handicap, race, creed, color, religion, sex, age, or national origin, including but not limited to practices in recruitment, recruitment advertising, employment, selection for training or apprenticeship, rates of pay or other forms of compensation, upgrading, demotion, transfer, layoff, or termination.

**3.4.5.3** Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth these policies of non-discrimination.

**3.4.5.4** Solicitations or advertisements for employees placed by or in behalf of Contractor shall state that qualified applicants shall receive consideration for employment without regard to handicap, race, creed, color, religion, sex, age, or national origin.

**3.4.6 Prevailing Wage Scale**

**3.4.6.1** Contractor is required to comply with policies, conditions and rules of the Tennessee Department of Labor pursuant to TCA 12-4-401, et seq, which include that if the Contract Sum exceeds fifty thousand dollars (\$50,000.00), Contractor is required to pay Prevailing Wage Scale current in the area of the project to laborers and mechanics employed on the Work, as set forth in said rules, policies, and statute, and to furnish weekly payrolls with the decision number noted on each to the Tennessee Department of Labor.

**3.4.6.2** When a Federal Wage Scale will apply to the Project, it will be included in Contract Documents, and Contractor shall pay not less than rates set forth. If both federal and State wage rates apply to project, Contractor shall pay the higher of the two wage scales for each craft or trade.

**3.4.6.3** Current Prevailing Wage Scale Determination(s) for this project will have been bound herein, after the Supplementary Conditions, or issued by addendum, if Owner's estimate of the value of Work indicates that it is required. Failure of Owner or Designer to provide current wage scale decision prior to bidding does not relieve Contractor of obligations set forth above.

**3.4.6.4** If applicability or values of Prevailing Wage Rates applicable to the project change during the course of the Contract, or differ from those provided in Contract Documents, equitable adjustment in Contract Sum shall be made.

**3.4.7 Prohibition of Illegal Immigrants**

**3.4.7.1** The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

**3.4.7.2** The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of any illegal immigrant in the performance

of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the Owner a completed and signed copy of the standard form entitled "Personnel Used in Contract Performance" with each application for payment. This form is provided in the Contract Documents. Such attestations shall be maintained by the Contractor and made available to state officials upon request.

**3.4.7.3** Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

**3.4.7.4** The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the Owner.

**3.4.7.5** The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a Contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a Contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.

**3.4.7.6** For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the Department of Homeland Security and who, under Federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.

**3.6** Add subparagraphs 3.6.2 and 3.6.3 as follows:

**3.6.2** Subparagraph 3.6.1 notwithstanding, if after bids are received or negotiations concluded, the State of Tennessee enacts a change in a sales, consumer, use, or similar state tax for the Work or a portion thereof provided by the Contractor, the Contract Sum shall be accordingly adjusted by appropriate modification or the Owner may make other lawful provision to mitigate the change.

**3.6.3** Neither Contract Sum nor Contract Time shall be adjusted for impacts resulting from a change in a tax by a governmental body other than the State of Tennessee, regardless of when the tax is enacted or goes into effect.

**3.7.2** Add to the beginning of the first sentence "Except as provided in subparagraph 3.7.5, "

**3.7.3** Add to the beginning of the first sentence "Except as provided in subparagraph 3.7.5, "

**3.7.4** Add to the beginning of the first sentence "Except as provided in subparagraph 3.7.5, "

**3.7.5** Add subparagraph 3.7.5, as follows:

This subparagraph applies to any applicable local governmental permit. The Owner is an agency of state government, and as such has sovereign immunity from the laws, ordinances, rules, regulations and lawful orders of local governments within the state; however, the Contractor shall obtain all normal permits whenever possible as if the Owner had no such immunity. If a

delay or denial in securing a local permit occurs, the Contractor shall inform the Designer and the Owner of the situation, propose corrective measures, continue to pursue the customary permits, and continue the Work upon approval of the Designer.

**3.8.2** Twice in clause three (3) delete "Change Order" and substitute "Modification".

**3.9.1** In first sentence, after "The Contractor shall employ, insert "and designate". After first sentence, insert "Contractor shall not change such designation without consent of Owner; and, Owner's consent shall not be unreasonably withheld."

**3.10** Add subparagraphs 3.10.4 through 3.10.7 as follows:

**3.10.4 Scheduling Agent**

At any time during the course of the Work, Owner may provide the services of a Construction Scheduling Agent. If provided, such services will be set forth in the specification of Progress Schedules. If provided, the purpose of such services is to assist in producing a progress schedule for the Work; however, no express or implied guarantee or warranty is provided by the Owner regarding the suitability of the derived schedules, and the Contractor retains full responsibility for the suitability of the schedules and for conforming to them. Contractor shall cooperate fully in developing a schedule, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

**3.10.5 Commissioning Agent**

At any time during the course of the Work, Owner may utilize the services of a Commissioning Agent to have selected building systems commissioned. If utilized, such services and systems will be set forth in the specifications of Commissioning Requirements. If utilized, the purpose of such services is to ensure that all building systems perform interactively according to the design intent as indicated by the Contract Documents and the Owner's operational needs. The Commissioning Agent will direct the commissioning process. Contractor shall cooperate fully in the commissioning process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

**3.10.6 Hazardous Materials Agent**

At any time during the course of the Work, Owner may utilize the services of a Hazardous Materials Agent to perform assessment of possible hazardous materials encountered by the Contractor in performance of the Work. If utilized, such services will be set forth in the specifications of Hazardous Materials Assessment Requirements. If utilized, the purpose of such services is to determine the appropriate course of action to contend with such materials in accordance with the Contract Documents. Contractor shall cooperate fully in the assessment process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

**3.10.7 Disaster Recovery Agent**

At any time during the course of the Work, Owner may utilize the services of a Disaster Recovery Agent to perform emergency disaster recovery services at the project site relating to Contractor performance of the Work, or other circumstances. Time being of the essence, such work will be to mitigate material damages that has occurred with the intent to lessen costs potentially to the Contractor and Owner. Contractor shall cooperate fully in the disaster recovery process, and shall require the necessary forces assisting the Contractor to likewise cooperate fully.

**3.12.6** After "...will do so", insert "prior to providing that which is the subject of the submittal".

**3.12.10** Delete the seventh (next to last) sentence in deference to the Designer's review responsibilities expressed in subparagraph 4.2.7.

**3.16.1** Insert at the end of the first sentence ",so that each may perform functions and exercise rights under the Contract Documents" before the period.

**3.17.1** In the second sentence after "The Contractor shall" insert ", subject to approval by the Attorney General of the State of Tennessee with respect to suits or claims against Owner, ", before continuing with "defend suits or claims..." In the last sentence after "However, if the Contractor" insert "knows or", before continuing with "has reason to believe..."

**3.18.1** In the first sentence, after "...permitted by law" delete "and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Paragraph 11.3" before continuing with ", the Contractor shall..."; then in the middle of the subparagraph, after "...of tangible property", delete "(other than the Work itself)" and substitute ", including loss of use resulting therefrom," before continuing with "but only to the extent caused by", then insert "willful or" before continuing with "the negligent acts or..."

**3.19** Add paragraph 3.19 as follows:  
**Relations with Owner's Representatives**

**3.19.1** Contractor, subcontractors, material suppliers, and sub-subcontractors shall neither offer nor give a product, service, payment, negotiable instrument, gift, gratuity, or other compensation in connection with this project to a representative or employee of the State of Tennessee, the Designer, or the Designer's consultants without Owner's consent. Evidence of a violation of this requirement may be cause for termination of this Contract.

**3.20** Add paragraph 3.20 as follows:  
**Participation of Minority-Owned Businesses:**

**3.20.1** To the extent that the Contractor or a subcontractor is a Minority-owned Business, the Contractor shall report to the State its own status in this regard and the names and amounts of contracts entered into with minority-owned businesses on State projects in order for the State to collect data on such participation.

**3.20.2** "Minority-owned Business" means a business which is solely owned, or at least fifty-one percent (51%) of the assets of outstanding stock of which is owned, by an individual who personally manages and controls the daily operations of such business, and who is impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, religion, ethnic background, sex, or disability.

**3.20.3** To be a "Minority-owned Business" for the purposes of this contract, a business must be certified as a "Minority-owned Business" by an agency of the federal government or the government of the State of Tennessee which is normally engaged in the practice of providing such certification.

**3.21** Add paragraph 3.21 as follows:  
**Security of Protected Information**

**3.21.1** Contractor is required to comply with policies, conditions and rules of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations, which includes protection of the security of information identified as protected health information (PHI).

**3.21.2** If Contractor is notified of the presence of PHI contained in facilities identified in the Work, then Contractor shall transmit such notice to all employees, subcontractors, material suppliers, and other affiliates of the Contractor allowed access to such facilities during the course of the Work.

**3.21.3** All individuals notified per the requirements of this paragraph shall not read, examine, remove, or otherwise interfere with PHI. They shall not allow access to PHI, or disclose the contents of PHI, to any other person. All such individuals with knowledge of an unauthorized disclosure of PHI shall notify either an appropriate State official or a manager of the Contractor with responsibility for notifying the appropriate State official.

## 4 ADMINISTRATION OF THE CONTRACT

**4.1** Change the name of this paragraph to "Designer". "Architect" or "Engineer" when used in Contract Documents shall be substituted with "Designer", regardless of modifiers or possessive use, unless specifically indicated to be employed by Contractor.

**4.1.1** Delete this subparagraph and substitute as follows: "Designer" is the licensed prime design professional or firm lawfully practicing architecture, landscape architecture, or engineering, identified in the Bidding Documents and Agreement form for project. The term "Designer" means the Designer or the Designer's authorized representative.

**4.1.3** Delete "against whom the Contractor has no reasonable objection and"...

**4.2.1** In first sentence, at item (3), delete "with the Owner's concurrence, from time to time", and substitute "at the Owner's request".

**4.2.2** In last sentence, delete "since these" and substitute "all of which".

**4.2.4** At end of last sentence, after "...through the Owner", insert "or the Owner's designee", before the concluding period.

**4.2.7** Delete first sentence and substitute "The Designer will review and take appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data, and Samples, checking for compliance with the requirements of, and conformance with the intent of, the Contract Documents."

**4.2.8** In first sentence, after "...The Designer will", insert "help the Owner", before continuing with "prepare Change Orders..."

**4.2.10** In last sentence, after "...representatives shall be", delete "as set forth in an exhibit to be", before continuing with "incorporated in the Contract Documents", then insert "if requested by the Contractor", before the concluding period.

**4.2.12** At end of subparagraph, in last sentence, delete "in good faith" and substitute "in accordance with a reasonable and professional standard of care".

**4.3.2** In the first sentence, after "Claims by either party", insert ", except claims of Liquidated Damages,"; after first sentence, add "If the impact of the condition giving rise to the Claim cannot be fully evaluated, a preliminary notice of a pending claim shall be made within the stated time limit subject to further action in a timely manner."

**4.3.3** In second sentence after "...or as provided in" delete "Subparagraph 9.7.1 and", before continuing with "Article 14..."

**4.3.4** In first numbered clause of first sentence, after "...the Contract Documents" insert ", taking into account that unless otherwise stipulated in Contract Documents, excavations and other subsurface construction activity shall be considered unclassified down to design depth, regardless of substrate and abandoned or inactive infrastructures".

**4.3.5** In first sentence, after "...written notice as ", delete remainder of sentence beginning with "provided herein shall..." and substitute "required by the Contract Documents shall be given to the Owner by the Contractor, and written notice received by the Contractor from Owner acknowledging the claim and authorizing construction activity to proceed, before the Contractor shall proceed to execute the construction activity giving rise to the claim; thence, the claim shall be addressed under provisions of paragraph 4.4." At end of subparagraph, add "Documentation of claims shall conform to the requirements of Article 7."

**4.3.7.1** Delete the entire clause and substitute "To make claim for an increase in Contract Time, Contractor shall give written notice as provided herein, and include an estimate of cost, which

shall be limited to that allowed by 8.3.3, and an explanation of the cause and probable effect on progress of Work. In the case of a continuing delay, only one claim is necessary, and Contractor shall subsequently detail the full scope of the delay."

**4.3.9** At the end of this subparagraph, after "...be equitably adjusted", insert "subject to limitations and requirements contained in the Contract Documents".

**4.3.10** Delete this subparagraph in its entirety and substitute:

**Claims for Consequential Damages.** The Contractor waives claims against the Owner for consequential damages arising out of or relating to this Contract due to either party's termination in accordance with Article 14, including principal office expenses, the compensation of personnel stationed at the principal office, and any damages for losses of financing, business, and reputation, and for loss of profit.

**4.4.1** In first sentence, delete "but excluding those arising under Paragraphs 10.3 through 10.5," Beginning in second sentence with "mediation, arbitration or litigation of", delete the rest of the subparagraph and substitute "action pursuant to remedies provided by law for claims between Owner and Contractor".

**4.4.2** In first sentence, after "...receipt of the Claim", insert "or information preliminary or pursuant to a Claim or a modification to a Claim, and shall". At end of subparagraph, add "If Designer recommends approval or rejection of the Claim, Owner and Contractor shall have ten (10) days after receipt to protest. If Designer suggests compromise, parties shall have ten (10) days after receipt to protest. If the Designer declines to resolve the claim, the Owner may, but is not obligated to, then take the lead in resolving the claim."

**4.4.5** At the end of the subparagraph, delete "and arbitration", and substitute "with the consent of both parties and to remedies as otherwise provided by law".

**4.4.6** Delete this Paragraph and all other references to arbitration. As a matter of law, claims by or against the State of Tennessee are not subject to arbitration.

**4.4.8** Delete this Paragraph and all other references to mechanic's liens. As a matter of law, the State of Tennessee and its property are not subject to mechanics' and materialmen's liens. Subcontractors, suppliers, and other claimants are protected through the Contract Bond as required by TCA § 12-4-201, et. seq., TCA § 4-15-102 (f)(2), and paragraph 11.5 of these Conditions. Specific requirements for notice of claims on the Bond are set forth in TCA § 12-4-205.

**4.5** Delete this Paragraph and all other references to mediation. The State of Tennessee is not subject to mandatory mediation.

**4.6** Delete this Paragraph and all other references to arbitration. The State of Tennessee is not subject to arbitration.

## 5 SUBCONTRACTORS

**5.2** Add subparagraphs 5.2.5 and 5.2.6 as follows:

**5.2.1** In first sentence, delete "as soon as practicable" and insert "within twenty-one (21) days"; and, delete last sentence from this subparagraph and substitute: "No construction activity shall be commenced by a person or entity in question until all objections have been resolved. If required, Contractor shall furnish evidence satisfactory to Designer, showing each proposed subcontractor is competent to execute work covered by the subcontract. Subcontractors identified as a part of Contractor's bid for this project shall be used in the capacity listed, unless

otherwise approved by the Owner in accordance with State Building Commission policy."

**5.2.3** In the second sentence after "...rejected Subcontractor was", insert "able to meet requirements of Contract Documents and" before continuing with "reasonably capable of performing..."

**5.2.5** Contractor shall not award subcontract to one who submitted a competing general bid for the same Contract and subsequently withdrew, reneged, or otherwise failed to enter into contract.

**5.2.6** Contractor shall not allow work under the Contract to be performed by a contractor or subcontractor that has been disqualified from participating in State construction projects under the supervision of the State Building Commission. Such disqualification extends to succeeding or related corporations, partnerships, joint ventures, and other business organizations having substantial factual or legal connections, continuity, or identity with those that have been disqualified. If such a participant is discovered, Contractor shall immediately discontinue the participation and provide a suitable substitute at no additional cost to the Owner, and provide documentation to the Owner of the action taken to comply with this requirement.

**5.3.1** At the beginning of the subparagraph, delete through "...legally required for validity", and substitute "In the written agreement between the Contractor and Subcontractor," before continuing with "the Contractor shall...". At end of the subparagraph insert "In no event shall Subcontractor have any claim against Owner."

**5.4.2** At end of the subparagraph add "Upon any such assignment, Owner is not responsible for past breaches, monetary or otherwise, of the Contractor."

**5.4.3** Add subparagraph 5.4.3 as follows:  
Assignment is at the option of Owner. The Owner has no duty or obligation to exercise this option, nor is any right created for any subcontractor to expect or rely upon such assignment.

## **6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

**6.1.1** At end of first sentence, delete "and waiver of subrogation".

**6.2.3** Delete second sentence and substitute "The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of improperly timed construction activities, damage to the Work, or defective construction of a separate contractor."

## **7 CHANGES IN THE WORK**

**7.2.1** In the first sentence after "...a written instrument" delete "prepared by the Designer and" before continuing with "signed by the Owner...". In clause two (2) of first sentence after "Contract Sum", insert ", and that the price includes overhead and profit, and represents all direct and indirect costs associated with the change".

**7.2.2** Delete entire subparagraph, and substitute "Unless otherwise agreed in writing by Owner and Contractor, the method of determining adjustments in Contract Sum shall be by one or more of the methods set forth in 7.3.3, and shall be based on reasonable expenditures and savings as set forth in subparagraph 7.3.6."

**7.3.1** In the first sentence after "...a written order", delete "prepared by the Designer and" before continuing with "signed by the...".

**7.3.4** After "...for determining the", delete "proposed" before continuing with "adjustment in the..."

**7.3.6** In first sentence, delete "a reasonable allowance for overhead and profit", and substitute "an allowance for overhead and profit in accordance with subparagraph 7.3.10"; and, after the second sentence, which ends with "...appropriate supporting data.", delete the rest of the subparagraph, including the five subordinate clauses, and substitute clauses 7.3.6.1 through 7.3.6.4 as follows:

**7.3.6.1** Costs for the purpose of this subparagraph 7.3.6 shall be limited to the following:

- .1 Direct Payroll Expense of labor;
- .2 costs of materials, supplies, and equipment, including cost of transportation thereof, whether incorporated or consumed;
- .3 rental costs of machinery and equipment rented from others, and not more than eighty percent (80%) of the Associated Equipment Distributors Nationally Averaged Rental Rates for Construction Equipment for machinery and equipment belonging to Contractor;
- .4 costs of premiums for bonds and insurance to the extent required by Contract Documents, permit fees, and sales, use, or other similar taxes related to the Work;
- .5 additional Direct Payroll Expense of superintendence directly attributable to authorized overtime; and
- .6 Direct Payroll Expense of project manager and clerical work directly attributable to the change.

**7.3.6.2** The following items are "Class 1 Time-Related Expenses", and shall be considered as costs when Contract Time is extended due to additional work or due to a Class 1 cause defined in 8.3, and solely to the extent directly attributable to extension of time. In all other instances, the following items shall be considered fixed costs already included in the general requirements of the Work for the duration of the Contract Time:

- .1 On-site field offices, sheds, phones, sanitary facilities, utilities, drinking fountains, cleaning, safety programs, and other construction facilities and temporary controls not specifically required for additional work;
- .2 costs of project superintendence;
- .3 Superintendent's and other general use vehicles.
- .4 Other general use vehicles, being those requiring a class D, H, or M license, and excluding those requiring a class A, B, or C license, as set forth in the Tennessee Driver Handbook or comparable current successor publication of the Tennessee Department of Safety.

**7.3.6.3** Direct payroll expense (DPE) costs delineated in 7.3.6.1.1, 7.3.6.1.5, 7.3.6.1.6, and 7.3.6.2.2 shall be limited to base salary or hourly wage plus a maximum of thirty percent (30%) of base salary or hourly wage, and further limited to a maximum of One hundred twenty-five dollars (\$125) per hour, to cover social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance.

**7.3.6.4** Specifically excluded from costs and included in overhead are:

- .1 Corporate, home office, and branch office overhead, rent, mortgage, off-site utilities, project management, and personnel not otherwise mentioned;
- .2 capital expenses and interest on capital;
- .3 hand tools.

**7.3.8** Beginning in the first sentence, after "...to the Owner," delete the rest of the subparagraph and substitute "eligible amounts included in the Contract Sum by the Construction Change Directive for such changes shall be included in the Schedule of Values".

**7.3.10** Add subparagraph 7.3.10 as follows:

In paragraph 7.3, the allowance for overhead and profit, included in the total cost to Owner, shall be limited to the following:

- .1 For Contractor performing work with its own forces, or Subcontractor performing work with its own forces or with a sub-subcontractor, allowance shall be 10% overhead and 5% profit.
- .2 For Contractor, for Work performed by Contractor's Subcontractor, allowance shall be 5% profit on the amount due Subcontractor.
- .3 Cost to which overhead and profit is to be applied shall be determined in accordance with Subparagraph 7.3.6.
- .4 To facilitate checking for increases or decreases in the Contract Sum, proposals shall be accompanied by Contractor's complete itemization of costs of work including labor, materials and equipment, plus allowance for overhead and profit.

## **8 TIME**

---

**8.2.2** Delete last sentence.

**8.2.3** At end of sentence, delete "within the Contract Time" and substitute "in accordance with the Agreement".

**8.3** Delete entire paragraph and substitute as follows:  
**Delays, Extensions of Time, and Forced Acceleration**

**8.3.1** The basis exists for an extension of time if Contractor is delayed in performing Work, but solely to the extent that delays are unforeseeable, unavoidable, and beyond the control and without fault or negligence, in whole or in part, of Contractor, subcontractors, sub-subcontractors, and suppliers at every tier, and said delays directly impact the Contractor's ability to achieve Substantial Completion in accordance with the Contract Time requirements, and said delays cannot be made up by reasonable efforts otherwise, and said delays stem from the following causes:

- .1 Class 1 causes: an act or failure to act on the part of Owner or Designer or an employee of either, or of a separate contractor employed by Owner, or an injunction against Owner or Owner's representatives.
- .2 Class 2 causes: abnormal weather, acts of God, riots, civil commotion, acts of War, fire, unavoidable casualties, epidemics, quarantine restrictions, labor disputes, unusual delay in transportation, freight embargoes, or insolvency of subcontractors, sub-subcontractors, or suppliers.

**8.3.2** If the basis exists for an extension of time under subparagraph 8.3.1, Owner may at its option:

- .1 in the case of additional work or a Class 1 cause, assign the Class 1 Time-Related Expenses, defined in 7.3.6.2, plus the overhead and profit allowed in 7.3.10, to a special allowance that can be earned based upon the extent of actual use of the related Time Extension in completion of the Work;
- .2 accept the reasonable and appropriate time extension as determined by Designer to cover such delay, and in the case of a Class 2 cause, there will be no corresponding adjustment in Contract Sum, and the sole recourse of Contractor will be entitlement to time extension as provided by Designer regardless of actual source or cause of delay;
- .3 order Contractor to accelerate construction activity by working overtime and by adding extra forces in order to overcome such delays, and adjusting the Contract Sum in accordance with Article 7 to compensate Contractor for such directed acceleration; however, direct costs used in determining such compensation shall be limited to properly substantiated and documented premium or overtime labor costs; or,
- .4 employ a combination of the above remedies.

**8.3.3** Neither Owner nor Designer will be obligated or liable to Contractor for, and Contractor hereby expressly waives claims against Owner and Designer on account of damages, costs, expenses, or related impacts which Contractor, subcontractors, sub-subcontractors, suppliers, or other persons may incur as a result of a Class 2 cause enumerated in 8.3.1; Contractor's sole and exclusive remedy and full compensation in such event shall be extension of Contract Time in accordance with provisions of the Contract Documents. Contractor likewise waives claims of damages, costs, or expenses due to a delay resulting from a Class 1 cause except and solely to the extent of costs allowed under 7.3.6.

**8.3.4** Claims relating to time shall be made in accordance with applicable provisions of Paragraph 4.3 or shall receive no consideration. If monthly Weather Delay Reports are required by the specifications, then claims for time extension based upon weather delays will be denied if a submitted report does not corroborate the claim or if no report was submitted when it was required, and Contractor waives the right to such claims.

**8.3.5** Extensions of time shall be implemented in accordance with Article 7.

## **9 PAYMENTS AND COMPLETION**

---

**9.3.1** At the beginning of the subparagraph, delete "At least ten days before", and substitute "Prior to" before continuing with "the date established". In second sentence, after "...shall be notarized", delete ", if required,", before continuing with "and supported by...".

**9.3.1.1** After "...Construction Change Directives", delete ", or by interim determinations of the Designer," before continuing with "but not yet...".

**9.3.1.2** In first sentence, after "Such applications", delete "may" and substitute "shall" before continuing with "not include requests...".

**9.3.2** At the end of the subparagraph, after "...storage and transportation", delete the rest of the last sentence and substitute "to the extent those costs have been included in the Contract Sum and actually incurred. Additional costs, which may be attendant to off-site storage, are the responsibility of the Contractor, and cannot be claimed by Contractor against Owner."

**9.3.3** In first sentence, after "...to the Owner", delete "no later than the time of payment", and substitute "at the time payment is received by the Contractor".

**9.4.2** In the numbered clauses of the fourth sentence, delete the third clause.

**9.5.1** At beginning of clause seven (7) at end of subparagraph, delete "persistent".

**9.6.1** After "...Owner shall make payment" delete remainder of subparagraph and substitute "in accordance with TCA 12-4-701 et seq, as may from time to time be amended." Add clauses 9.6.1.1 and 9.6.1.2 as follow:

**9.6.1.1** Payment is due not later than forty five (45) days after an undisputed Certificate for Payment has been received by Owner. Owner will endeavor to make payment within twenty-one (21) days, but shall not be obligated to do so.

**9.6.1.2** Based upon Applications for Payment submitted to the Designer by the Contractor and Certificates for Payment issued by the Designer, the Owner shall make progress payments monthly to the Contractor as provided in the Contract Documents as follows: Ninety five percent (95%) of the portion of the Contract Sum properly allocable to labor, materials, and equipment incorporated in the Work and materials and equipment suitably stored in accordance with subparagraph 9.3.2, less the aggregate of previous payments made; and, upon Substantial

Completion of the entire Work, a sum sufficient to increase the total payments to ninety eight percent (98%) of the Contract Sum, less such amounts as the Designer shall determine for incomplete work and unsettled claims and liquidated damages.

**9.6.7** Delete the entire subparagraph and substitute: Provisions regarding retainage of TCA 66-11-144 are applicable to contracts for improvement of real property when Contract Sum is five hundred thousand dollars (\$500,000) or more. Contractor shall comply with these provisions and the procedures pursuant thereto established by the Tennessee State Treasurer and Department of Finance & Administration for establishment of an escrow account.

**9.7** Delete entire paragraph.

**9.8.1** Add to this subparagraph: "In order to occupy or utilize the Work for its intended use, Owner must have received complete Product Data, Operating & Maintenance Data, orientation, and training, as may be required by specifications, and use and occupancy permits."

**9.8.3** After the first sentence and before the second sentence, insert "Not later than at the time of this inspection, the Contractor will submit its application for payment commensurate with Substantial Completion."

**9.8.4** At the end of the first sentence, after "...accompanying the Certificate", insert ", subject to the provisions of subparagraph 9.12.2".

**9.8.5** After the first sentence, delete the rest of the subparagraph and substitute "Upon such acceptance and submission by Contractor and certification by Designer of an application for payment with consent of surety, if any, the Owner shall make appropriate reduction in retainage applying to such Work or designated portion of it. Such payment shall be in accordance with clause 9.6.1.2."

**9.10.2** In the fifth numbered clause of the first sentence, after "...releases and waivers", delete "of liens" before continuing with "...claims, security interests...". In the second sentence, after "...Owner, the Contractor", delete "may furnish a bond" and substitute "shall furnish acknowledgment of the matter from the Surety" before continuing with "satisfactory to the...". At the end of the second sentence, and twice in the third (last) sentence, delete "lien" and substitute "matter".

**9.10.4** Delete the opening sentence up to the colon (:) and substitute "The making of final payment shall not constitute a waiver of claims by the Owner for the following"; and at the beginning of clause one (1), delete "liens,"; and in clause two (2) after "...the Contract Documents" insert "irrespective of when such failure is discovered."

**9.10.5** Delete the subparagraph and substitute "Acceptance of final payment shall constitute a waiver of claims except those previously made in writing and identified as unsettled at the time of final Application for Payment."

**9.10.6** Add subparagraph 9.10.6 as follows: Final Payment constituting the entire unpaid balance of Contract Sum, shall be paid by Owner to Contractor when Work has been completed, the Contract fully performed, and a final Certificate for Payment issued by Designer.

**9.11** Add paragraphs 9.11 and 9.12 as follows:  
**Method of Payment**

**9.11.1** Payments to Contractor shall be made through Owner's automated clearinghouse wire transfer system. Contractor shall have completed an Authorization Agreement for Automatic Deposits ACH Credits Form prior to commencing Work and prior to submitting a first application for payment.

**9.11.2** Debit entries to correct errors authorized by the Authorization Agreement for Automatic Deposits ACH Credits Form shall be limited to those errors detected prior to the effective date of the credit entry. The remittance advice shall note that a correcting entry was made. Corrections shall be made within two banking days of the effective date of the original transaction. Other errors detected at a later date shall take the form of a refund, or in some instances, a credit memo if additional payments are to be made.

**9.11.3** The Owner reserves the right to deduct from amounts which are or shall become due and payable to Contractor under this or any contract between the parties any amounts which are or shall become due and payable to the State by the Contractor.

## **9.12 Liquidated Damages**

**9.12.1** Time being of the essence, Contractor further agrees to accept conditions for liquidated damages in the amount set forth in Contract Documents for each calendar day in excess of allotted time for Substantial Completion, or approved extension thereof, parties agreeing that the amount of damages resulting from delay would be uncertain and difficult to prove, and further agreeing that such liquidated damages set forth in the Owner-Contractor Agreement are a reasonable estimate of those damages which could result from delay.

**9.12.2** If a portion of the Work is certified Substantially Complete, the amount of Liquidated Damages applicable to the remaining Work may be reduced by written mutual agreement.

**9.12.3** Secondary Liquidated Damages shall be twenty-five percent (25%) of that originally required by the Contract Documents, and shall accrue until such time that Work has been completed and the Contract fully performed if:

- .1 the time for completion stipulated in the Certificate of Substantial Completion has passed; or, if no such time was stipulated, then thirty (30) calendar days has passed following the certified date of Substantial Completion; and,
- .2 the Contract Time, including approved extensions, plus thirty (30) calendar days, has passed.

## **10 PROTECTION OF PERSONS AND PROPERTY**

**10.3.1** After "...by the Contractor," insert "which has neither been rendered harmless nor specified as inherent in the Work," before continuing with "the Contractor shall...". Add to this subparagraph "Reasonable precautions shall include, but not be limited to, precautions inherent in the Work."

**10.3.2** At the beginning of this subparagraph, insert "Under circumstances described in 10.3.1, Owner will have the option to either terminate the contract as provided in Article 14, proceed with Contractor in a mutually agreed plan of action, or as follows:". At the end of the last sentence, after "...accomplished as provided", insert "for claims in Article 4 and for changes in the Work", before concluding with "in Article 7."

**10.3.3** Delete entire subparagraph.

**10.5** Delete entire subparagraph.

## **11 INSURANCE AND BONDS**

**11.1.1** In first sentence, after "...such insurance as will protect the Contractor", insert "and the Owner" before continuing with "from claims set forth below..." and, in clause five (5) delete "other than" and substitute "including"; and, after "...tangible property," insert "on or away from the site,".

**11.1.2** Add to subparagraph as follows:

Specific lines of coverage and limits of liability provided by Contractor shall be written in a comprehensive form, satisfactory to Owner in the following minimum requirements:

- .1 Comprehensive General Liability, including:
  - .a Premises / Operations;  
Underground / Explosion / Collapse;  
Products / Completed Operations;  
Contractual;  
Independent Contractors;  
Owner / Contractor Protective;  
Broad Form Property Damage;  
Personal Injury (Employment Exclusion deleted)
  - .b Combined single limits for bodily injury and property damage:  
Each Occurrence: \$1,000,000  
Aggregate: \$2,000,000
  - .c Products and Completed Operations to be maintained for one year after final payment.
  - .d Asbestos Abatement Insurance
    - .1 Non-friable Asbestos: If removal or abatement of non-friable asbestos is included in the Work, and Contractor's General Liability Insurance coverage excludes risks associated with asbestos, then Contractor shall provide evidence of a Special Endorsement.
    - .2 Friable Asbestos: If removal or abatement of friable asbestos is included in the Work, then Contractor shall provide evidence of a Special Endorsement.
    - .3 Special Endorsement: Evidence of a Special Endorsement shall be in the form of a Certificate of Insurance certifying a special endorsement for asbestos abatement insurance with a minimum \$500,000 limit of liability. If Contractor is performing no portion of the asbestos removal or abatement with its own forces, then Contractor, in lieu of its own such endorsement, may substitute a Certificate showing such special endorsement covering the subcontractor or sub-subcontractor actually performing the asbestos removal or abatement.
- .2 Comprehensive Automobile Liability:
  - .a Including owned, hired, and non-owned vehicles; or, if there are no owned vehicles, Contractor may provide written certification of such and provide coverage limited to hired and non-owned vehicles.
  - .b Bodily injury and property damage combined single limits:  
Each Occurrence: \$500,000
- .3 Workers Compensation and Employer's Liability, (without restriction as to whether covered by Workmen's Compensation law):
  - .a Workers Compensation:  
according to statute
  - .b Employer's Liability: \$100,000
- .4 If an exposure exists, Aircraft and Watercraft Liability (owned & non-owned), with limits approved by Owner, shall be provided.

**11.1.3** Delete second sentence and insert:

Certificate(s) of insurance provided to attest to coverage shall specifically cite each element of coverage and not less than limits set forth in subparagraph 11.1.2, as confirmation of complete coverage, and shall identify Contractor, Producer, insurance Carrier, Project, and certificate holder, and state Producer's notice requirements as set forth in 11.1.4. The term "Commercial General Liability" shall mean all of the coverages listed in 11.1.2.1.a unless specifically noted otherwise in the certificate.

**11.1.4** Add subparagraph 11.1.4 as follows:

Contractor shall notify Owner in writing of changes in coverage or carrier not later than ten (10) days after notification of Contractor by Producer, or 10 days before Contractor makes a change, whichever occurs first. Contractor shall require that if policies are cancelled or modified before expiration date thereof, Producer shall endeavor to mail 10 days prior written notice to certificate holder named therein.

**11.3** Delete entire paragraph.

**11.4.1** In first sentence, at beginning, delete "Unless otherwise provided, the", then following "...subsequent Contract modifications" delete "and cost of materials supplied or installed by others, comprising total value for the entire Project" and substitute "for the covered Project", before continuing with "at the site...", and after "...replacement cost basis", delete "without optional deductibles" at end of first sentence. In the last sentence, after "...interests of the Owner," insert "as the named insured, and" before continuing with "the Contractor, subcontractors and Sub-subcontractors", then delete "in the Project" and substitute ", as additional insureds in the Project".

**11.4.1.1** In first sentence, after "...earthquake, flood, windstorm," delete "falsework, testing and startup, temporary buildings," before continuing with "and debris removal", then delete "including demolition occasioned by enforcement of any applicable legal requirements", before continuing with "and shall cover reasonable compensation for Designer's" then delete "and Contractor's" before continuing with "services and expenses..."; and, add to this Subparagraph: "Such insurance carried by the Owner will include a \$10,000 deductible clause. The deductible is the responsibility of the Contractor."

**11.4.1.2** In second sentence, after "...interests of the", insert "Owner as a named insured," before continuing with "Contractor, Subcontractors and...".

**11.4.1.3** Delete entire clause.

**11.4.1.4** Delete entire clause, and substitute "The Owner's property insurance shall exclude portions of the Work stored off-site or in transit; and, Contractor shall provide insurance upon such portions to protect the Owner's interest."

**11.4.2** In last sentence, after "...Sub-subcontractors in the Work", insert a period, and delete the rest of the sentence.

**11.4.3** Delete last sentence.

**11.4.4** Delete entire subparagraph.

**11.4.5** Delete entire subparagraph.

**11.4.6** Delete last sentence and substitute "Each policy shall contain a provision that the issuing company will endeavor to mail ten (10) days written notice to the Contractor should the policy be canceled prior to the expiration date. Failure to mail such notice shall impose no obligation or liability of any kind upon the Owner or issuing company."

**11.4.7** Delete entire subparagraph.

**11.4.9** Delete all except the last sentence and change "such" to "an insured".

**11.4.10** After "...loss with insurers" in the first sentence delete the rest of the subparagraph.

**11.5.1** Delete entire subparagraph and substitute as follows:

If the initial Contract Sum as awarded exceeds \$100,000, Contractor shall provide Contract Bond, in the amount of one hundred percent (100%) of Contract Sum covering faithful performance of contract and payment of obligations arising thereunder. If a Contract Bond is required, and a Three-Year Roof Bond is also stipulated in the Bidding Documents, then the Three-Year Roof Bond shall be provided as stipulated. Bond(s)



shall be executed on Tennessee State Building Commission Standard Form(s) exhibited in Bidding Documents for project, and subject to provisions of subparagraph 11.5.3.

**11.5.3** Add subparagraph 11.5.3 as follows:

Surety is the person or entity identified as such in a bond and is referred to throughout the Contract Documents as if singular in number. The term "Surety" means the Surety or the Surety's authorized representative. Surety Company issuing bond shall be licensed to transact business in Tennessee by Department of Commerce and Insurance. Bonds shall have certified and current Power-of-Attorney for the Surety's Attorney-in-Fact attached. Attorney-in-fact who executes bond on behalf of Surety shall be one who is licensed by Tennessee as a resident agent, and shall affix license number to bond; or, countersignature by and license number of a licensed resident agent shall be affixed to the bond in addition to the signature of the Attorney-in-Fact.

## **12 UNCOVERING AND CORRECTION OF WORK**

**12.1.2** In third sentence, after "...the Contract Documents," delete "correction" and substitute "uncovering, correction, and recovering" before continuing with "shall be at..."

**12.2.2.1** Delete the last sentence of this clause, and substitute: "If Three Year Roof Bond has been provided, then with regard only to the roofing system, its installation, and materials, the one year time period hereunder is extended for two (2) additional years for a total period of three (3) years. Until such time as the three (3) years hereunder have expired, Contractor's obligations hereunder shall be joint and several with Company as defined and set forth in the Roofing System Warranty. For the purpose of Subparagraph 12.2.2, all of Company's actions, whether of omission or commission, pursuant to the Roofing System Warranty are likewise actions of Contractor hereunder and shall in no way negate or reduce the responsibilities of Contractor hereunder."

**12.2.5** In second sentence, after "...in Subparagraph 12.2.2", delete "relates" and substitute ", and time periods of applicable special warranties, relate" before continuing with "only to the..."

## **13 MISCELLANEOUS PROVISIONS**

**13.1.1** In the first sentence after "...by the law of the" delete remainder of sentence and insert "State of Tennessee".

**13.2.1** At the beginning of the second sentence, delete "Except as provided in Subparagraph 13.2.2, neither" and substitute "Neither" before continuing with "party to the ...".

**13.2.2** Delete entire subparagraph.

**13.4.3** Add subparagraph 13.4.3 as follows:

If normal procedures within the Contract fail to satisfy a claim against the Owner, further action is to be taken up with the Tennessee Claims Commission, pursuant to TCA § 9-8-101, et seq. Damages recoverable against the State shall be limited expressly to claims awarded by the Commission.

**13.6.1** After "...date payment is" delete the rest of the subparagraph and substitute "past due as stated in subparagraph 9.6.1 in accordance with TCA 12-4-704, as may from time to time be amended".

**13.7** Delete entire paragraph.

## **14 TERMINATION OR SUSPENSION OF THE CONTRACT**

**14.1.1** In the four (4) numbered clauses at the end of the subparagraph: move "or," from the end of the third clause to the end of the second clause; end the subparagraph at the end of the third clause, replacing the semicolon with a period; and, delete the entire fourth clause.

**14.1.3** At end of subparagraph, after "...overhead, profit, and", delete "damages" and substitute "costs as defined in 7.3.6".

**14.2.1** At beginning of clause one (1), delete "persistently or repeatedly refuses or", and substitute "refuses or repeatedly", before continuing with "fails to supply..."; and at beginning of clause three (3), delete "persistently disregards", and substitute "disregards or repeatedly fails to comply with", before continuing with "laws, ordinances, or..."

**14.2.2** In clause one (1) after "... take possession" insert "of all Work in place and," before continuing with "of the site".

**14.4.2** In clause no. 2 after "...of the Work" insert ", including materials for which Owner has paid and which are stored off-site" before concluding with "; and,".

**14.4.3** After "...receive payment for" delete the rest of the subparagraph and substitute "the completed portion of Work plus a fraction of five percent (5%) of the remaining balance of the Contract Sum, which fraction shall be equal to the value of the Work completed divided by the Contract Sum."

**END**